

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ANGEL HERNANDEZ
17769 64th PLACE NORTH
LOXAHATCHEE, FLORIDA 33470

Case No. 1:17-cv-456

Judge _____

v.

THE OFFICE OF THE COMMISSIONER
OF BASEBALL
245 PARK AVENUE
NEW YORK, NEW YORK 10167

**COMPLAINT, WITH
JURY DEMAND**

and

MAJOR LEAGUE BASEBALL
BLUE, INC.
245 PARK AVENUE, 30TH FLOOR
NEW YORK, NEW YORK 10167

For his complaint against the defendants, The Office of the Commissioner of Baseball and Major League Baseball Blue, Inc., Angel Hernandez states as follows:

THE PARTIES

1. Plaintiff Angel Hernandez (“Hernandez”) is a citizen of Florida and resides in Loxahatchee, Florida. Hernandez is an umpire employed by Major League Baseball.

2. Defendant The Office of the Commissioner of Baseball is an unincorporated association also doing business as Major League Baseball. Its principal place of business is 245 Park Avenue, New York, New York.

3. Defendant Major League Baseball Blue, Inc. is a Delaware corporation and is Hernandez’s employer of record. Major League Baseball Blue, Inc.’s principal place of business is 245 Park Avenue 30th Floor, New York, New York.

4. Together, The Office of the Commissioner of Baseball and Major League Baseball Blue, Inc. are referred to as “Major League Baseball,” “MLB” or “the Office of the Commissioner.”

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. § 1331 because this case involves issues that arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) and 42 U.S. Code § 1981. This Complaint also arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, based upon an actual controversy between the parties.

6. Jurisdiction over Hernandez’s state law claims is based upon the Court’s pendent jurisdiction as set forth in 28 U.S.C. § 1367(a).

7. Major League Baseball is subject to personal jurisdiction in this District under O.R.C. § 2307.382(A).

8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because, among other things, Major League Baseball is deemed to reside in this district pursuant to 28 U.S.C. § 1391(c)(2) as Major League Baseball is subject to personal jurisdiction in this district with respect to this civil action.

FACTS

9. Hernandez was born in Havana, Cuba, and currently resides in Loxahatchee, Florida.

10. Hernandez has been an umpire for Major League Baseball since at least 1993, nearly 24 years.

11. Having nearly 24 years of experience, Hernandez is one of the most tenured umpires currently employed by Major League Baseball.

12. Hernandez's duties as an umpire include calling balls and strikes as a home plate umpire, making judgment calls regarding plays in the game, getting into a position on the field that allows him to make accurate calls, making signals that accurately reflect the calls being made, handling arguments regarding an umpire's decisions and dealing with other high-tension on-field situations.

13. As part of its supervision of umpires, Major League Baseball regularly conducts evaluations of its umpires' performances. Major League Baseball generally issues these evaluations both in the middle of the season and at the season's end.

14. These evaluations are based on standards set by Major League Baseball for its umpires in various areas, including focus, hustle, demeanor, style and form of calls, reactions to developments of plays, situation management, official baseball rules and interpretations, and four-umpire mechanics.

15. Though the format of these performance evaluations has changed over Hernandez's 24 years as an MLB umpire, the evaluations generally grade an umpire's performance with one of the following ratings: "exceeds standard," "meets standard" or "does not meet standard."

16. Over the course of his career, Hernandez has consistently received above average reviews on these evaluations.

17. From 2002 to 2010, Mr. Hernandez received multiple "exceeds standard" ratings in areas including hustle, fraternization, four-umpire mechanics, demeanor, style and form of calls, reactions to developments of plays, situation management, official baseball rules and interpretations, and focus.

18. Hernandez did not receive a single “does not meet standard” rating on these evaluations from 2002 to 2010.

19. Some of these performance reviews also contained detailed evaluations of each umpire’s accuracy in calling balls and strikes behind the plate, including providing a percentage of accurately called pitches.

20. Hernandez’s accuracy calling balls and strikes behind the plate increased from 92.19% in 2002 to 96.88% in 2016. Hernandez’s accuracy was frequently praised by the Office of the Commissioner and he often displayed above average accuracy in calling pitches.

21. In addition to Major League Baseball giving these ratings on an umpire’s performance evaluations, the evaluations also often contained general evaluative comments from the Office of the Commissioner, Major League Baseball’s front office.

22. Hernandez frequently received praise from the Office of the Commissioner in these comments. For example, in Hernandez’s 2002 Year-End Evaluation, Hernandez received multiple “exceeds standard” ratings and was commended for his adherence to the strike zone.

23. Hernandez’s 2003 Year-End Evaluation stated that Hernandez had “done all that the Officer of the Commissioner has asked as far as policies and procedures. . . are concerned.” The Office of the Commissioner also recognized Hernandez’s “great passion for being a Major League umpire,” and urged him to “[k]eep up the good work and [his] good work ethic.”

24. This type of praise from the Office of the Commissioner was common for Hernandez. In 2004, the Office of the Commissioner stated that Hernandez had “another outstanding year,” and that he had done “an exemplary job of implementing MLB policies and procedures.”

25. In 2005, the Office of the Commissioner again noted Hernandez had “another outstanding year” and commended him for his “superb” work ethic, as well as his “cooperation with supervisory staff and with the umpire program . . . particularly [his] work with less-experienced umpires.”

26. Hernandez also served as an interim crew chief for a portion of the 2005 season.

27. The Office of the Commissioner continued to praise Hernandez following the 2007 season. In that season’s Year-End Evaluation, the Office of the Commissioner “felt [Hernandez] had an excellent season overall.” The Office of the Commissioner further commented that Hernandez had “continue[d] to show a willingness to learn and improve—even though [he had] become a veteran Major League umpire.” Hernandez’s leadership as a veteran umpire was also recognized by the Office of the Commissioner in those comments, in which it stated that Hernandez had set an “excellent example for the junior umpires.”

28. Starting with the 2008 season, the format of the umpire performance evaluations changed. However, Hernandez’s performance did not. From 2008-2010, Hernandez received multiple “exceeds standard” ratings, in areas including situation management, handling of in-game situations involving warnings and objections, hustle, and application of pace of game procedures.

29. In short, Hernandez’s performance from 2002-2010 was viewed by Major League Baseball to be exemplary. Major League Baseball praised both the technical and personal aspects of Hernandez’s performances—both his work on the field and the example he set for younger umpires.

30. Hernandez’s excellent work was recognized by Major League Baseball in the form of multiple postseason assignments from 2002-2010. Hernandez was an umpire in both the 2002

and 2005 World Series, an umpire for the League Championship Series in 2000, 2001, 2003, 2004, 2007 and 2010, and an umpire in the League Division Series in 1997, 1998, 2002, 2005, 2009.

31. However, Major League Baseball's attitude towards Hernandez changed in 2011 when Joe Torre arrived in the Office of the Commissioner.

32. Following the 2010 season, there was a change in Major League Baseball's front office as Joe Torre was named Executive Vice President for Baseball Operations on or about February 26, 2011. In this position, Torre was charged with overseeing Major League Baseball's umpires.

33. Torre's current position with Major League Baseball is Chief Baseball Officer. Though his title has changed, Torre still oversees Major League Baseball's umpires.

34. Torre has a history of animosity towards Hernandez stemming from Torre's time as manager of the New York Yankees. This dates back to at least May 4, 2001.

35. On May 4, 2001, after what Torre perceived to be an incorrect call by Hernandez, Torre took to the media to insult him and call into question his skill as a Major League umpire.

36. Torre was quoted by the media as saying that Hernandez "seems to see something nobody else does," quipping that "you'd like to have him sit down and watch the video, something I'm sure he doesn't do. . ." Torre went on to say that, if Hernandez had reviewed the video, "he would look like a fool."

37. Torre further commented on Hernandez by saying, "I think he just wanted to be noticed over there."

38. This quote is significant because following Torre's arrival in Major League Baseball's front office in 2011, the notion that Hernandez "just wanted to be noticed" permeated Hernandez's yearly evaluations, as did Torre's general negative attitude towards Hernandez.

39. In Hernandez's 2011 Mid-Year Evaluation—the first evaluation since Torre's arrival in the Office of the Commissioner—he did not receive any exceeds standard ratings despite having received multiple for every year since 2002.

40. Most notably, under the “Administrative Component” of Hernandez's 2011 Mid-Year Evaluation, the Office of the Commissioner made the following comment: “You need to work on your communication skills with on-field personnel, particularly because your approach has fostered a Club perception that you try to put yourself in the spotlight by seeing things that other umpires do not.”

41. This echoes the comments made by Torre in 2001—that, somehow, Hernandez is using his role as a Major League Baseball umpire to bring attention to himself at the expense of his proficiency as an umpire.

42. Prior to 2011, Hernandez was never rebuked by the Office of the Commissioner for allegedly attempting to “put himself in the spotlight.”

43. These comments were made despite the fact that Hernandez had been routinely praised for his handling of situations involving on-field personnel, including situations involving warnings and ejections. In fact, as recently as 2010, Hernandez received an “exceeds standard” rating for his in-game situation management. Up to this point, Hernandez had been consistently commended by the Office of the Commissioner for his hard work, his dedication, his professionalism, and the example he sets for younger umpires.

44. The “put yourself in the spotlight” comment was not the only strange thing about Hernandez's 2011 Mid-Year Evaluation. For his “Base Judgment,” Hernandez received an overall “meets standard” rating despite the comments stating that he worked “with a tremendous amount

of instinct,” that he hustled “to see every play clearly and have a positive ‘feel’ for the game,” and further noting that he had not missed a single call for the first half of the 2011 season.

45. Following the All-Star Break in the middle of the 2011 season, Major League Baseball, for no valid reason, decided to break up Hernandez and his long-time crew chief Joe West. Hernandez was then placed on Gerry Davis’ crew.

46. Hernandez’s 2011 Year-End Evaluation again echoed Torre’s 2001 comments. In that evaluation, the Office of the Commissioner commented that Hernandez was “battling the perception of the Clubs and the media that [he was] routinely attempting to put [himself] in the spotlight.”

47. This comment was made by the Office of the Commissioner despite the individual observers’ reports never showing there was a time where Hernandez acted in such a way as to “put himself in the spotlight” during the 2011 season. During instances where he was tasked with handling high-tension on-field situations, the observers routinely noted that Hernandez was “calm,” “professional,” “businesslike” and/or “composed.”

48. Furthermore, one observer noted that “Amgel [sic] is a hard worker and great example for other umpires.” Another commented that Hernandez “is a very good umpire.”

49. These observer comments indicate that the Office of the Commissioner’s remarks regarding Hernandez’s on-field demeanor were not based on facts.

50. Hernandez’s only “exceeds standard” rating in his 2011 Year-End Evaluation was for base judgment, where the Office of the Commissioner noted that Hernandez had missed only one call over the entire course of the season.

51. For the 2011 season, Hernandez's accuracy calling balls and strikes behind the plate continued to be above average. His accuracy percentage for the 2011 season was 96.21%, compared to the staff average of 95.67% for the same season.

52. Despite Hernandez's high level of performance in the 2011 season, the 2012 Year-End Evaluation showed more of the same from the Office of the Commissioner.

53. Though Hernandez did receive two "exceeds standard" ratings for hustle and mobility, he also received his first "does not meet standard" rating since at least 2002. This rating was received in the area of MLB Procedures. Essentially, this "does not meet standard" rating was given for one isolated incident throughout the course of an entire season. Though the comments stated that "for the greater part of the season, [Hernandez] did a commendable job of operating within the guidelines," Major League Baseball used this isolated incident to punish Hernandez. The Office of the Commissioner apparently viewed this as justifying a "does not meet standard" rating—again, Hernandez's first "does not meet standard" rating since at least 2002.

54. In that same 2012 Year-End Evaluation, Hernandez was praised by individual observers for his situation management and "improved disposition" on the field during situations involving warnings and ejections. Once again, however, despite the praise, the Office of the Commissioner gave Hernandez only a "meets standard" rating for ejections and situation handling.

55. In the 2012 Year-End Evaluation, the Office of the Commissioner once again commented on the "perception of the Clubs and media that [Hernandez was] routinely attempting to put [himself] in the spotlight."

56. Despite this "perception" and the Office of the Commissioner's purported displeasure with Hernandez's "MLB procedures," Hernandez served as an interim crew chief for

the majority of 2012. The Office of the Commissioner noted that Hernandez “should be proud of a lot of” his work as interim crew chief.

57. Hernandez’s 2013 Year-End Evaluation continued to emphasize the “perception” of Hernandez as an umpire, as opposed to any objective analysis of his umpiring skills.

58. Hernandez did not receive any “exceeds standard” ratings in his 2013 Year-End evaluation. This is despite the fact that the Office of the Commissioner commented, under Style and Form of Calls, that Hernandez’s “mechanics were picture perfect and emulated by less-experienced umpires.” However, Hernandez’s “picture perfect” mechanics were not enough to earn him an “exceeds standard” rating in this category.

59. Though the Office of the Commissioner was hesitant to give Hernandez any “exceeds standard” ratings, it was quick to once again discuss the “perception” people purportedly had of Hernandez as an umpire.

60. The Office of the Commissioner did so in its comment on Hernandez’s demeanor, saying that Hernandez “will likely battle the perception of the Clubs and media that you are routinely attempting to put yourself in the spotlight for some time.” The Office of the Commissioner continued, saying to Hernandez, “as you know in this ‘perception is reality’-based business, any bump in your professional behavior will be magnified by the media and the fans.”

61. It was in the 2014 Year-End Evaluation that the Office of the Commissioner first addressed Hernandez’s desire for a “greater leadership role among the staff.” The Office of the Commissioner stated that Hernandez needed “to continue to take steps forward in [his] communication and [his] accountability before” a greater leadership role could be given.

62. These comments also noted a discussion between Torre and Hernandez where Torre explained to Hernandez that he needed “to be accountable to [himself] and let things from the past go.”

63. Hernandez has been consistently commended for his professionalism and leadership as a senior Major League Umpire. As stated above, the Office of the Commissioner itself has noted that Hernandez is an “excellent example for the junior umpires,” that he has demonstrated above-average professionalism, and that his mechanics had been emulated by less-experienced umpires. Hernandez has also served as an interim crew chief on multiple occasions. The Office of the Commissioner concluded that, despite all of this, Hernandez still needed to take “steps forward” to have a greater leadership role on the umpire staff.

64. For the 2015 Year-End Evaluation, the Office of the Commissioner once again noted the alleged “perception” some had of Hernandez, commenting under the Professionalism category that Hernandez needed to be aware of “the perception [he was] giving off on the field.”

65. Similar comments were made in Hernandez’s 2016 Year-End Evaluation, where the Office of the Commissioner harped on “the long-standing perception” of Hernandez throughout the league, while noting in the same sentence that Hernandez’s “on field demeanor ha[d] improved significantly.”

66. Though it may seem as if Major League Baseball’s problems with Hernandez begin and end with some personal animus Torre and some other individuals in the Office of the Commissioner may have towards Hernandez, an overview of how Major League Baseball has treated minorities such as Hernandez shows a much deeper and more troubling trend.

67. Since Torre's arrival in the Office of the Commissioner in 2011, there have been six World Series in Major League Baseball. Each World Series has an umpire crew comprised of six umpires, for a total of 36 individual assignments.

68. In the six World Series games since Torre's arrival in the Office of the Commissioner in 2011, there has been only one non-white umpire assigned to the World Series: Alfonso Marquez, an umpire born in Mexico, was assigned to both the 2011 and 2015 World Series.

69. The other 34 umpires assigned to the World Series during Torre's time in the Office of the Commissioner have been white. Hernandez has not been assigned to a World Series since Torre's arrival, despite being assigned to the World Series in both 2002 and 2005 and umpiring numerous postseason games, both before and after Torre joined the Major League Baseball front office.

70. Hernandez is fully qualified to be assigned to a World Series. Hernandez has umpired the World Series before, has consistently received above average performance reviews, and has substantial experience in umpiring both regular season and postseason games.

71. Despite these qualifications, Hernandez has watched as other, less-experienced, generally white umpires have been assigned to the World Series instead of him.

72. Umpires assigned to the World Series receive a monetary bonus for that assignment.

73. By Major League Baseball's refusal to assign him to a World Series, Hernandez has missed numerous opportunities to umpire the World Series and receive the World Series bonus he would otherwise be entitled to.

74. The refusal to select Hernandez for World Series assignments is a continuation of the discrimination described more fully above.

75. This trend of preferential treatment of less-experienced white umpires at the expense of veteran minority umpires such as Hernandez can also be seen in Major League Baseball's pattern of promoting umpires to crew chief.

76. Since the American League and the National League joined together in 2000, there have been at least 23 umpires promoted to crew chief.

77. All 23 umpires promoted to crew chief since 2000 have been white.

78. In each Major League Baseball season from 2000 to 2016, there were 162 games.

79. From 2000 to 2016, there were 30 teams playing in Major League Baseball each season.

80. This extrapolates to 2,592 games played by each individual team from 2000 to 2016.

81. The total number of games played from 2000 to 2016 is 77,760.

82. For those 77,760 games since the American League and the National League joined together in 2000, there has not been a permanent minority crew chief.

83. Upon information and belief, there has never been an African-American crew chief and, with the exception of one American born umpire of Latino descent, no other minority umpire (including African-Americans, Mexicans, Cubans and other Latinos) has been selected to be crew chief in the history of Major League Baseball.

84. This is despite the fact that minority umpires—including Hernandez—have served as interim crew chiefs throughout portions of some of these seasons. For example, Hernandez

served as interim crew chief in portions of the 2005 and 2012 seasons, and received praise for his performances in that role.

85. Ten umpires have been promoted to crew chief since 2011. All of these umpires have been white.

86. Hernandez has not been promoted to crew chief despite having more experience at the time of their promotion to crew chief than nine of the ten umpires that were promoted since 2011.

87. Hernandez was fully qualified for a promotion to crew chief: he had the experience necessary for the position; he had served as an interim crew chief multiple times in the past; he had received numerous positive performance reviews since at least 2002; his accuracy calling balls and strikes behind the plate had increased from 92.19% in 2002 to 96.88% in 2016; and he has been routinely mentioned as being a good role model and teacher for junior umpires.

88. Hernandez has applied for the position of crew chief at least four times since 2011. He most recently applied to be a crew chief for the 2017 season.

89. If an umpire expresses written interest in the position of crew chief but is not promoted to that position, the Office of the Commissioner must, upon request by that umpire, give a written explanation of the reasons why that umpire was not chosen for the position of crew chief. That explanation must be provided to the umpire by the beginning of the championship season.

90. Both Hernandez and the World Umpires Association requested a written explanation from the Office of the Commissioner as to why Hernandez was not promoted to crew chief for the 2017 season. It took quite some time before a response was sent.

91. On or about March 27, 2017, Torre responded to these requests on behalf of the Office of the Commissioner.

92. In the March 27, 2017 letter, Torre stated that Hernandez needed to “gain greater mastery of the Official Playing Rules and Replay regulations, continue to improve [his] situation management, and display an ability to refocus and move forward after missing calls or receiving constructive feedback from the Office.”

93. Of course, Torre’s statement in the March 27, 2017 letter is completely belied by the nearly two decades worth of performance reviews praising Hernandez for these things and more.

94. The areas Torre addresses in his March 27, 2017 letter are ones that have only become an “issue” for Hernandez after Torre took his position in the Office of the Commissioner. Prior to Torre’s arrival in the Office of the Commissioner, Hernandez had consistently received commendations for his handling of in-game situations, for his ability to get into position and then make the correct call, and for the way he adhered to the rules and regulations of Major League Baseball.

95. In the same letter, Torre recognized that Hernandez shares “many of the same qualities and abilities with the selected umpires that the Office of the Commissioner relied on in its selection process, including [his] passion and dedication.”

96. Despite “sharing” many of those same qualities, Hernandez was again wrongfully passed over for the position of crew chief.

97. As described in detail above, since Torre arrived in the Office of the Commissioner, there has been a noticeable tonal shift in Hernandez’s evaluations.

98. Following Torre’s arrival, Hernandez received less “exceeds standard” ratings on his evaluations. Furthermore, there was an increased criticism of his on-field situation handling,

his ability to make correct calls in the game, and his overall quality as an umpire—areas in which Hernandez had consistently received praise before 2011.

99. Instead of promoting Hernandez to the position of crew chief, Major League Baseball chose instead to promote individuals who were white and were not as qualified as Hernandez.

100. Upon information and belief, Major League Baseball has in recent years asked umpires who did not even apply for the position of crew chief to take a crew chief job. If those umpires accepted the job, Major League Baseball would select them over umpires who did apply, such as Hernandez.

101. The refusal to promote Hernandez to crew chief is a continuation of the discrimination described more fully above.

102. Every day that Hernandez is not a crew chief, he is being discriminated against in many cities around the United States, including in the city of Cincinnati, Ohio.

103. On June 5, 2017, Hernandez filed two Charges of Discrimination with the Equal Employment Opportunity against The Office of the Commissioner of Baseball and Major League Baseball Blue, Inc. (collectively, the “June 5th” Charges). Hernandez filed with the June 5th Charges a letter requesting an early Notice of Right to Sue.

104. On June 28, 2017, the Equal Employment Opportunity Commission issued to Hernandez a Notice of Right to Sue regarding the June 5th Charge against The Office of the Commissioner of Baseball. That Notice of Right to Sue is attached as Exhibit A.

105. On June 29, 2017, the Equal Employment Opportunity Commission issued to Hernandez a Notice of Right to Sue regarding the June 5th Charge against Major League Baseball Blue, Inc. That Notice of Right to Sue is attached to Exhibit B.

COUNT ONE

(Discrimination in Violation of Title VII of the Civil Rights Act of 1964)

106. Hernandez incorporates by reference all of the foregoing allegations as if fully set forth herein.

107. By its conduct as described above, Major League Baseball has discriminated against Hernandez in violation of Title VII of the Civil Rights Act of 1964 on the basis of his race, color and/or national origin.

108. Hernandez is a member of a protected class; he is Latino.

109. Hernandez has suffered adverse employment actions through Major League Baseball's refusal to select him for various World Series and its refusal to promote him to the position of crew chief.

110. As described in detail above, Hernandez was and is qualified for both a World Series assignment and the position of crew chief.

111. However, despite his qualifications and experience, Hernandez has not been chosen for a World Series assignment or the position of crew chief. Instead, less qualified individuals—the vast majority of which have been white—have been selected for a World Series or the position of crew chief.

112. The selection of these less qualified, white individuals over Hernandez was motivated by racial, national origin and/or ethnic considerations.

113. Major League Baseball's actions were intentional, with reckless disregard for Hernandez's rights.

114. As a direct and proximate result of Major League Baseball's wrongful acts and omissions, Hernandez has sustained injuries and damages including, but not limited to, loss of

earnings and earning capacity; loss of career opportunities; mental anguish; physical and emotional distress; humiliation and embarrassment; and loss of professional reputation.

115. Major League Baseball's unlawful conduct in violation of Title VII was outrageous and malicious, was intended to injure Plaintiff, and was done with conscious disregard of Hernandez's civil rights, entitling Hernandez to an award of punitive damages.

COUNT TWO
(Discrimination in Violation of Section 1981)

116. Hernandez incorporates by reference all of the foregoing allegations as if fully set forth herein.

117. By its conduct as described above, Major League Baseball has intentionally discriminated against Hernandez in violation of Section 1981 on the basis of his race and/or color.

118. Hernandez is a member of a protected class; he is Latino.

119. Major League Baseball's actions in refusing to select Hernandez for various World Series and its refusal to promote him to the position of crew chief have deprived Hernandez of his rights and were caused by Major League Baseball's intentional discrimination.

120. As described in detail above, Hernandez was and is qualified for both a World Series assignment and the position of crew chief.

121. However, despite his qualifications and experience, Hernandez has not been chosen for a World Series assignment or the position of crew chief. Instead, less qualified individuals—the vast majority of which have been white—have been selected for a World Series or the position of crew chief.

122. The selection of these less qualified, white individuals over Hernandez was motivated by racial and/or ethnic considerations.

123. Major League Baseball's actions were intentional, with reckless disregard for Hernandez's rights.

124. As a direct and proximate result of Major League Baseball's wrongful acts and omissions, Hernandez has sustained injuries and damages including, but not limited to, loss of earnings and earning capacity; loss of career opportunities; mental anguish; physical and emotional distress; humiliation and embarrassment; and loss of professional reputation.

125. Major League Baseball's unlawful conduct in violation of Section 1981 was outrageous and malicious, was intended to injure Plaintiff, and was done with conscious disregard of Hernandez's civil rights, entitling Hernandez to an award of punitive damages.

COUNT THREE
(Discrimination in Violation of O.R.C. § 4112.02)

126. Hernandez incorporates by reference all of the foregoing allegations as if fully set forth herein.

127. By its conduct as described above, Major League Baseball has discriminated against Hernandez in violation of Ohio Revised Code § 4112.02 on the basis of his race, color and/or national origin.

128. Hernandez is a member of a protected class; he is Latino.

129. Hernandez has suffered adverse employment actions through Major League Baseball's refusal to select him for various World Series and its refusal to promote him to the position of crew chief.

130. As described in detail above, Hernandez was and is qualified for both a World Series assignment and the position of crew chief.

131. However, despite his qualifications and experience, Hernandez has not been chosen for a World Series assignment or the position of crew chief. Instead, less qualified individuals—

the vast majority of which have been white—have been selected for a World Series or the position of crew chief.

132. The selection of these less qualified, white individuals over Hernandez was motivated by racial, national origin and/or ethnic considerations.

133. Major League Baseball's actions were intentional, with reckless disregard for Hernandez's rights.

134. As a direct and proximate result of Major League Baseball's wrongful acts and omissions, Hernandez has sustained injuries and damages including, but not limited to, loss of earnings and earning capacity; loss of career opportunities; mental anguish; physical and emotional distress; humiliation and embarrassment; and loss of professional reputation.

135. Major League Baseball's unlawful conduct in violation of O.R.C. § 4112.02 was outrageous and malicious, was intended to injure Plaintiff, and was done with conscious disregard of Hernandez's civil rights, entitling Hernandez to an award of punitive damages.

COUNT FOUR
(Declaratory Judgment)

136. Hernandez incorporates by reference all of the foregoing allegations as if fully set forth herein.

137. There is a substantial and continuing controversy between Hernandez and the defendants and a declaration of rights is both necessary and appropriate to establish that:

- A. Hernandez is entitled to the relief requested herein; and
- B. Hernandez is permitted to discuss the conduct of the defendants publicly, without penalty, forfeiture, disciplinary action, restriction, retaliation or claims of damages by the defendants.

138. In the absence of such a declaration, the defendants or those acting in concert with them may subject Hernandez to adverse consequences, chilling the ability of Hernandez to enforce his rights, and the requested declaration will resolve the parties' respective rights in that regard.

WHEREFORE, Plaintiff prays for a judgment jointly and severally against the defendants as follows:

- A. That the Court grant full back pay to the Plaintiff;
- B. That the Court grant Hernandez compensatory damages for all harm to Hernandez resulting from the discrimination against him by Major League Baseball, including, but not limited to, emotional distress, humiliation and other damages caused by Major League Baseball's conduct;
- C. That the Court grant Hernandez punitive damages for Major League Baseball's intentional malicious and recklessly indifferent conduct;
- D. That the Court grant Hernandez all employment benefits he would have enjoyed had he not been discriminated against;
- E. That the Court grant Hernandez expenses of litigation, including reasonable attorneys' fees, pursuant to Title VII of the Civil Rights Act of 1964;
- F. That the Court declare that Hernandez is entitled to the relief requested herein and that Hernandez is permitted to discuss the conduct of the defendants publicly, without penalty, forfeiture, disciplinary action, restriction, retaliation or claims of damages by the defendants;
- G. That the Court grant Hernandez a jury trial;
- H. That the Court grant temporary, preliminary and permanent injunctive relief prohibiting Major League Baseball from engaging in further discriminatory conduct; and

I. That the Court grant Hernandez all other relief the Court deems just and proper.

Respectfully submitted,

/s/ Kevin L. Murphy

Kevin L. Murphy, Esq. (#0021810)

J. Jeffrey Landen (#0018174)

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